

Message Text

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FM AMEMBASSY PORT AU PRINCE

TO SECSTATE WASHDC 98

C O N F I D E N T I A L SECTION 1 OF 2 PORT AU PRINCE 1557/1

E.O. 11652: GDS

TAGS: EINV, EAGR, CPRS

SUBJECT: EMBASSY COMMENTS ON STRICTER LIMITATIONS ON FOREIGN
OWNERSHIP OF LAND

REF: (A) PORT AU PRINCE 1524; (B) PORT AU PRINCE 1450

1. SUMMARY: THE NEW LAW ON LAND OWNERSHIP, SUMMARIZED IN REF. A, IS SUBSTANTIALLY MORE RESTRICTIVE THAN THE CURRENT LAW. DESIGNED PRIMARILY TO ELIMINATE REPORTED FLAGRANT ABUSES OF THE 1964 CONSTITUTIONAL PROVISION ON ALIEN OWNERSHIP OF LAND, IT ALSO RELECTS INTENSIFIED HAITIAN SENSITIVITY TO SOVEREIGNTY ISSUES. THE LAW WILL CERTAINLY CAUSE CONFUSION, IF NOT RETRENCHMENT, IN FOREIGN MISSIONARY AND BUSINESS CIRCLES, MAY LEAD TO CLAIMS OF HARASSMENT AND EXPROPRIATION, AND IS LIKELY TO DISCOURAGE SOME PROSPECTIVE FOREIGN INVESTORS. AT THE SAME TIME, THE THEME OF DEFENDING HAITI'S LAND AGAINST SPECULATIVE FOREIGNERS HAS STRONG POLITICAL APPEAL, AND PROVIDED THE LAW IS ADMINISTERED EQUITABLY IT MAY ADD TO REGIME'S PRESTIGE AT HOME. END SUMMARY.

2. THE NEW LAND LAW, WHILE NOT REGRESSING TO HAITI'S ABSOLUTE PROSCRIPTION OF FOREIGN OWNERSHIP OF THE 1800'S, IS MORE RESTRICTIVE THAN CURRENT PRACTICES. FOR THE FIRST TIME SINCE 1918, THE AMOUNT OF LAND FOREIGNERS MAY OWN IS SPECIFICALLY
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LIMITED, BACKED UP BY DETAILED ADMINISTRATIVE RULES AND

DEFINITIONS TO ENSURE THAT FOREIGNERS PURCHASE LAND ONLY IN THE AMOUNTS AND FOR THE PURPOSES ESTABLISHED BY THE LAW. APPEARANCE OF THE LAW AT THE PRESENT MOMENT WOULD APPEAR TO BE THE RESULT OF A SERIES OF FACTORS, INCLUDING THE FOLLOWING:

(A) REPORTED FLAGRANT ABUSES OF CONSTITUTIONAL LIMITATIONS (NEVER EFFECTIVELY APPLIED) BOTH ON LAND OWNERSHIP BY ALIENS AND ON ENTRANCE OF FOREIGNERS INTO THE REAL ESTATE BUSINESS;

(B) IRRITATION IN SOME GOVERNMENT CIRCLES AT MISSIONARY GROUPS WHO ARE BELIEVED TO HAVE USED SUBTERFUGES TO ENGAGE IN THE REAL ESTATE BUSINESS AND WHO HAVE BEEN ACCUSED OF USING FUNDS COLLECTED FROM ABROAD FOR PERSONAL EXPENSES RATHER THAN ASSISTANCE TO NEEDY HAITIANS;

(C) FEAR OF SOME NATIONALISTIC AND CONSERVATIVE HAITIANS THAT GOVERNMENT OFFICIALS MIGHT SIGN ANOTHER CONTRACT FOR THE DEVELOPMENT OF THE ILE DE LA TORTUE, WHICH IN THEIR VIEW WOULD RESULT IN THE ALIENATION OF HAITIAN TERRITORY; AND

(D) RECENT FUROR OVER REPORTED CASES OF HAITIAN "CITY SLICKERS" DEFRAUDING PEASANT FARMERS OF THEIR LAND AND THEN RESELLING THE LAND TO FOREIGNERS AS WELL AS TO WEALTHY HAITIANS.

3. ALTHOUGH THE TIMING OF THE LAW MAY BE THE RESULT OF CURRENT PROBLEMS, HAITIAN FEAR THAT ITS TERRITORY MIGHT BE ALIENATED BY FOREIGNERS HAS BEEN PRESENT SINCE THE BEGINNING OF THE REPUBLIC. (IN THE 1800'S, FOR EXAMPLE, FOREIGN OWNERSHIP OF HAITIAN LAND WAS ABSOLUTELY PROHIBITED.) MORE RECENTLY, THE GROWING SCARCITY OF LAND (HAITI HAS ONLY 10,700 SQUARE MILES OF TERRITORY FOR FIVE MILLION PEOPLE), INCREASED HAITIAN PRIDE AND SENSITIVITY ON SOVEREIGNTY ISSUES, AND THE CURRENT THIRD-WORLD RALLYING CRY THAT NATURAL RESOURCES BELONG TO THE PEOPLE HAVE ALL SERVED TO INTENSIFY BASIC HAITIAN RESENTMENT AT LAND OWNERSHIP BY FOREIGNERS. IN INTRODUCING THE PROPOSED LAW, SECRETARY OF JUSTICE JEANTY, ALTHOUGH CLAIMING THAT NEW LAW WOULD BE WELCOMED BY INVESTORS ANXIOUS TO PROMOTE THE ECONOMIC WELL-BEING OF HAITI, RESORTED TO INFLAMMATORY PHRASES AND NATIONALISTIC RHETORIC. FOR EXAMPLE, HE POINTED WITH PRIDE TO HAITI'S EFFORTS IN THE PAST TWO CENTURIES TO AID "IN THE EMANCIPATION OF PEOPLE WHOSE TERRITORY

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HAD BEEN ANNEXED UNDER THE PRETEXT OF THE SUPERIORITY OF A CERTAIN SKIN COLOR." HE ALSO REFERRED TO THE 1918 CONSTITUTION, WHICH FIRST PERMITTED FOREIGN OWNERSHIP, AS "IMPOSED BY AMERICAN BAYONETS OVER HAITIAN RESISTANCE" AND COMMENTED SEVERAL TIMES ON THE FACT THAT THE NEW LAW IS "IN ACCORD WITH NEW ECONOMIC REALITIES." AT THE SAME TIME, HE CLAIMED THAT THE NEW LAW FULLY MET THE LEGITIMATE NEEDS OF FOREIGN INVESTORS IN HAITI.

4. HAITIAN LAWYERS AT PRESENT DISAGREE ABOUT THE MEANING OF SEVERAL OF THE CLAUSES IN THE NEW LAW, AND THE CONFUSION WILL CONTINUE UNTIL THE DEPARTMENT OF JUSTICE ISSUES THE REQUIRED ADMINISTRATIVE REGULATIONS, AND PERHAPS EVEN UNTIL CASES ARE TAKEN INTO COURT. INTERPRETATION OF TWO CLAUSES IN PARTICULAR WILL HAVE AN IMPORTANT EFFECT ON THE RIGHTS OF FOREIGN BUSINESSES AND MISSIONARIES:

(A) ARTICLE 30 OF THE LAW PROVIDES THAT SOCIETIES, ASSOCIATIONS, RELIGIOUS SECTS AND MISSIONARY GROUPS CANNOT ACQUIRE PROPERTY UNLESS THEIR STATUTES HAVE BEEN APPROVED BY THE PRESIDENT. THEY CAN THEN ACQUIRE LAND "UNDER THE CONDITIONS SPECIFIED BY THE CONSTITUTION AND THE PRESENT LAW". ONE LAWYER BELIEVES THIS MEANS ONLY THAT THE ASSOCIATION MUST FIRST ACQUIRE LEGAL STATUS AND THEN CAN ACQUIRE LAND SO LONG AS IT ABIDES BY THE SPECIFIED FORMALITIES, I.E., PERMISSION OF THE SECRETARY OF JUSTICE. HE DOES NOT CONSIDER THESE ASSOCIATIONS WILL BE BOUND BY THE LIMITATIONS ON PURPOSES OR ACREAGE SPECIFIED IN THE LAW. HOWEVER, THE ARTICLE COULD ALSO BE READ AS LIMITING MISSIONARY GROUPS BOTH ON ACREAGE AND AS TO PURPOSES FOR WHICH LAND CAN BE OWNED.

(B) ARTICLE 32 OF THE LAW STATES THAT A DELAY OF SIX MONTHS IS GRANTED FOR THE "REGULARIZATION OF PRIOR PROPERTY ACQUISITIONS THAT ARE CONTRARY TO THE PROVISIONS OF THE CONSTITUTION AND THE PRESENT LAW". ACCORDING TO ONE LAWYER, THIS MEANS THAT COMPANIES OWNING MORE THAN THE ALLOWABLE AMOUNT OF LAND WILL HAVE SIX MONTHS TO GET RID OF IT. ANOTHER LAWYER CLAIMS THAT THE CONSTITUTION PROHIBITS "RETROACTIVE" LAWS, AND THAT THE CLAUSE MEANS ONLY THAT INDIVIDUALS AND COMPANIES WILL HAVE SIX MONTHS TO REGISTER THEIR PROPERTIES WITH THE DEPARTMENT OF JUSTICE.

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C O N F I D E N T I A L SECTION 2 OF 2 PORT AU PRINCE 1557/2

5. ALTHOUGH THE EMBASSY FORESEES CONFUSION AND COMPLAINTS, THE MOST SERIOUS CASE WILL BE THAT OF TRANSLINEAR. THE COMPANY'S PROPOSAL TO DEVELOP THE ILE DE LA TORTUE, WHICH HAS BEEN UNDER DISCUSSION WITH THE GOH FOR THE PAST SIX MONTHS (REF. B), WOULD NOT APPEAR TO BE LEGAL UNDER THE NEW LAW. FOR EXAMPLE, THE COMPANY HAS STATED THAT LAND MUST BE LEASED TO IT FOR A MINIMUM OF 25 YEARS WITH OPTION TO RENEW FOR ADDITIONAL TERMS OF 25 YEARS. (LAW PROVIDES ONLY FOR 9 YEAR LEASES FOR INDUSTRIAL AND AGRICULTURAL PURPOSES.) FURTHERMORE, COMPANY PURCHASED LAND FROM DUPONT CARIBBEAN FAR IN EXCESS OF LIMITATIONS PRESCRIBED BY PRESENT LAW, AND HAS INVESTED MONEY IN THE DEVELOPMENT OF THE ISLAND. IN VIEW OF THESE FACTORS, COMPANY OFFICIALS WILL BE SURE TO CLAIM EXPROPRIATION AND SUBMIT A CLAIM FOR COMPENSATION IF AGREEMENT CANNOT BE REACHED ON A DEVELOPMENT CONTRACT.

6. IN THE LONGER RUN, AND DEPENDING UPON HOW IT IS INTERPRETED AND APPLIED, THE NEW LAW MAY MAKE IT MORE DIFFICULT FOR HAITI TO ATTRACT FOREIGN INVESTMENT. FOREIGN BANKS AND INVESTORS HAVE ALWAYS BEEN SKITTISH ABOUT PROJECTS IN HAITI, AND THE NEW LAW AND ITS ACCOMPANYING RHETORIC ARE UNLIKELY TO REASSURE PROSPECTIVE INVESTORS. IN ADDITION, THE LIMITATIONS ON TOTAL LAND WHICH CAN BE ACQUIRED MAY MAKE SOME INVESTMENTS IN TOURISM AND IN AGRIBUSINESS IMPRACTICABLE. IN ANY EVENT, THE REQUIREMENT THAT STILL ANOTHER GOH DEPARTMENT APPROVE THE ESTABLISHMENT OF AN INDUSTRY

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OR BUSINESS OPENS THE POSSIBILITY OF ADDITIONAL LENGTHY DELAYS, ARISING EITHER OUT OF ADMINISTRATIVE INEPTITUDE OR A DESIRE ON THE PART OF SOME BUREAUCRATS TO BLOCK FOREIGN INVESTMENT OR TO EXACT MORE CONDITIONS.

7. WHETHER OR NOT THE MORE NATIONALISTIC AND ISOLATIONIST ASPECTS OF THE LAW WILL IN FACT ACT AS A DAMPER UPON FOREIGN INVESTMENT, THE LAW REFLECTS A STRONG FEELING AMONG KEY PALACE ADVISERS THAT HAITI SHOULD DEFEND ITS SOVEREIGN INTERESTS MORE VIGOROUSLY AND PREVENT ITS BEST LAND BEING ACQUIRED PREDOMINANTLY BY FOREIGNERS. ANY STRONG OR UNREASONED FOREIGN REACTION TO THE NEW LAND LAW WOULD MORE LIKELY CONFIRM THE NATIONALISTS IN THEIR VIEWS THAN STRENGTHEN THE FOREIGNERS' CASE. THE EMBASSY PLANS THEREFORE TO ENCOURAGE AMERICAN CITIZENS WITH COMPLAINTS TO STUDY THE LAW CAREFULLY AND ANALYSE ALL OPTIONS THOROUGHLY, WITH THE HELP OF LOCAL COUNSEL, BEFORE TAKING ACTION. GENERALLY, WE WILL URGE COMPLAINANTS TO SEEK REMEDIES THAT GOH OFFICIALS CAN ACCEPT WITHOUT POLITICAL EMBARRASSMENT OR WITHOUT APPEARING

TO RENEGE ON THE NATIONALIST PRINCIPLES UNDERLYING THE LAW.
THE MOST EFFECTIVE GENERAL APPROACH IS PROBABLY THAT WHICH
EMPHASIZES THE INCONSISTENCY BETWEEN THE GOVERNMENT'S EFFORTS
TO ATTRACT FOREIGN INVESTMENT AND ITS INTRODUCTION OF LEGIS-
LATION WHICH, AS A PRACTICAL MATTER, WOULD SURROUND SUCH IN-
VESTMENT WITH NEW AND UNPREDICTABLE CONSTRAINTS.
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